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FILED

IN THE

Supreme Court of the United States

October Term, 1949

No. 249

DALTON TRUMBO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

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IN THE

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No. .....

DALTON TRUMBO,

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vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Dalton Trumbo, prays that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia, rendered on June 13, 1949. On June 16, 1949, petitioner moved the Court of Appeals for an extension of time to July 5, .1949, to file a petition for rehearing. This motion was denied on June 23, 1949. On motion of petitioner, he was granted an extension of 30 days to August 12, 1949, in which to file this petition in this Court.

The petitioner was indicted under Rev. Statutes Section 102, as amended by Chapter 594, Act of June 22, 1938, 52 Stat. 942, U. S. C., Title II, sec. 192 [J. A. 9];[1] was found guilty by a jury verdict on the 5th day of May, 1948 [J. A. 28]; and thereafter made a motion for a new trial which was denied [J. A. 30-33]; on the 21st day of May, 1949, petitioner was sentenced to one year in jail and fined $1,000 [J. A. 29].

The petitioner perfected an appeal to the United States Court of Appeals, for the District of Columbia, which appeal (No. 9873) resulted in the judgment of affirmance, to which this petition is directed.

Statement of Matter Involved.

The first count of the indictment alleged in substance that the petitioner Trumbo, a novelist and screen writer (Vol. 25, Who's Who 2509), having appeared before the House Committee on Un-American Activities on October 28, 1947,[2] refused to answer a question put to him by the Committee, to wit, "Are you a member of the Screen Writers' Guild?", a question which the indictment alleged was pertinent to the matter under inquiry. The second count of the indictment was the same as the first, except that the question involved was, "Are you now, or have you ever been, a member of the Communist Party?"

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[1]Pursuant to paragraph 7 of the Supreme Court Rule 38, there are filed herewith copies of the joint appendix printed for use in the United States Court of Appeal, for the District of Columbia. References "J. A." are to pages of that printed record.

[2]The said hearings were officially reported; the full designation of the said hearings is: "Hearings Regarding The Communist Infiltration of the Motion Picture Industry Before the Committee on Un-American Activities House of Representatives, Eighth Congress, First Session, Public Law 601." Reference to the hearings hereafter will be designated as "[Comm. Tr. .....]."

Petitioner Trumbo testified before the Committee on October 28, 1947, one day following a similar appearance by John Howard Lawson, whose companion case (*Lawson v. U. S.*, No. 9872, U. S. C. A.—D. C.) is the subject matter of a petition for certiorari filed simultaneously with this petition and referred to hereafter as the Lawson petition.

Since the events of the first week of the Committee hearing were naturally identical, petitioner Trumbo will merely incorporate and not repeat pages 3 to 5 of the Lawson petition.

On the morning of October 28, 1947, when petitioner Trumbo was called, three members of the Committee, Congressman Thomas, Chairman, of New Jersey, Congressman Vail of Illinois, and Congressman McDowell of Pennsylvania, were present. The Chairman opened the hearing on that day by saying: "The record will show that a sub-committee is sitting and those present are Mr. McDowell, Mr. Vail, and Mr. Thomas" [J. A. 242]. After being sworn petitioner asked and was denied leave to read a statement, to introduce statements from twenty persons, including General Arnold of the Army Air Forces, and to submit scripts which he had written. He was then asked whether he was a member of the Screen Writers' Guild. In reply petitioner pointed to the invasion of the rights of secrecy of union membership lists and asserted that the objective of the Committee was to identify him with the Guild and then with the Communist Party, seeking thereby to destroy the Guild. Then the questioning proceeded in the following manner:

"The Chairman: I will ask you the question—

Mr. Trumbo: You ask me.

The Chairman: Are you a member of the Screen Writers' Guild?

Mr. Trumbo: I repeat:

The Chairman (pounding gavel): Excuse the witness—

Mr. Stripling: Just a moment, Mr. Chairman—

Mr. Trumbo: Am I excused?

Mr. Stripling: I have more questions—

Mr. Trumbo: Am I excused, or not?

The Chairman: No; just a minute. The chief investigator wants to ask some questions.

Mr. Stripling: Just a moment. I have some other questions, Mr. Trumbo, that I would like to ask you. Are you now, or have you ever been a member of the Communist Party?

Mr. Trumbo: Mr. Chairman, first, I should like to know whether the quality of my last answer was acceptable since I am still on the stand?

The Chairman: That hasn't got anything to do with your answer to the last question.

Mr. Trumbo: I see.

The Chairman: This is a new question, now.

Mr. Trumbo: I see.

Mr. Stripling, you must have some reason for asking this question—

Mr. McDowell: Yes, we do.

Mr. Trumbo: You do.

I understand that members of the press have been given an alleged Communist Party card belonging to me—is that true?

Mr. Stripling: That is not true.

The Chairman: You are not asking the question—

Mr. Trumbo: I was.

The Chairman: The chief investigator is asking the questions.

Mr. Trumbo: I beg your pardon, sir.

The Chairman: Are you or have you ever been a member of the Communist Party?

Mr. Trumbo: I believe I have the right to be confronted with any evidence which supports this question. I should like to see what you have.[2]

Mr. Chairman: Oh, well, you would?

Mr. Trumbo: Yes.

The Chairman: Well, you will, pretty soon.

(Laughter and applause.)

The Chairman (pounding gavel): The witness is excused. Impossible" [J. A. 388-90].

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[2]When the committee's chief investigator was questioned at the trial concerning his failure to produce the requested evidence, the following occurred:

"Q. I ask you, Mr. Stripling, whether you presented the evidence which you had to Mr. Trumbo at the time he requested it? A. He didn't request it of me.

Q. The Chairman said: 'The chief investigator is asking the questions.'

Did you, whether he requested the evidence of you or of the chairman, present him with the evidence which you had, when he requested that the evidence concerning Communist affiliation be presented to him? A. Well, he didn't give us a chance to present any evidence.

Q. Mr. Trumbo said: 'I believe I have the right to be confronted with any evidence which supports this question. I should like to see what you have.'

My question to you, sir, is did you at that time, even though his request was addressed to the Chairman, present him with the evidence you had about the Communist Party affiliation? A. This all occurred in a very short period.

Q. Can you answer yes or no? A. I didn't submit any evidence at that time. I didn't have time to submit any evidence.

Q. Then, is the answer, 'No, sir?' A. No; absolutely."

With this preliminary statement as to what occurred at the hearings, as shown at the trial, petitioner turns now directly to a consideration of the court proceedings.

Prior to the trial petitioner filed a motion to dismiss the indictment and a brief in support thereof. The motion was denied [J. A. 6, 11]. The only evidence offered by the government to prove the creation of a subcommittee was the testimony of Congressman John McDowell, who was allowed to read the following from the record of the Committee hearing on October 28, 1947:

> "The Chairman: The meeting will come to order. The record will show that a subcommittee is sitting and those present are Mr. McDowell, Mr. Vail and Mr. Thomas" [J. A. 381].

Government counsel conceded that all of its evidence as to the creation of the subcommittee was on the printed pages of the transcript of the committee's hearings as related by Congressman McDowell [J. A. 57]. Petitioner thereupon asked the Court to dismiss the case before trial [J. A. 70], but the motion was not granted by the Court [J. A. 71]. Instead the Court adopted the government's position, over objection, that the question of the chairman's power to appoint a subcommittee was solely a matter of law [J. A. 358-9]. Lewis Deschler, Parliamentarian of the House of Representatives, was called as a government witness, before the Court sitting without the jury [J. A. 360] and was allowed, over objections, to state his conclusion that "by immemorial custom subcommittees have always been appointed by the chairman of the full committee," and that "after an appointment has been made it is usually noted on the minutes of the committee" [J. A. 362].

On cross-examination the following testimony was elicited from Mr. Deschler:

> "Q. A Chairman appoints a subcommittee, the committee either tacitly does not object when it is brought to the attention of the full committee, or what the chairman does is subsequently ratified by the full committee? A. I assume after the chairman had designated or appointed a subcommittee, subsequently the full committee could take it under advisement, if they agreed to do so; but unless it is challenged, the chairman of the committee has always had the right to appoint a subcommittee" [J. A. 364].

On redirect, in answer to the question:

> "In other words, if they tacitly approved it, it is all right?"

The witness answered:

> "Oh, surely. If no question is raised in the full committee, why, they acquiesced in the action of the chairman."

The Court denied petitioner's motion to strike all of the testimony of the witness Deschler upon the ground that it was entirely concerned with custom and usage and in conflict with the written law [J. A. 375].

In the absence of the jury, subject to objection, the government also introduced testimony of Congressman McDowell that on November 17, 1947, twenty days after petitioner had appeared before the so-called subcommittee, a meeting of the full Committee was held and was attended by seven members. The witness testified that at that time the seven members voted unanimously for a resolution citing petitioner for contempt and reporting the same to

the House of Representatives. The witness testified that at that meeting, which was executive, no objection was made by any member present "to either the formation of the committee that heard Trumbo or the acts of the subcommittee that heard Trumbo" [J. A. 428].

Following receipt of this testimony the Court ruled that the chairman of the Committee had authority to appoint a subcommittee [J. A. 441].

Later, the Court charged the jury as follows:

> "It is also proper for me to advise you that the chairman of this committee had the right and authority to appoint a subcommittee" [J. A. 545].

This charge was specifically objected to [J. A. 548-49-50], and the Court refused to give petitioner's requested instructions 37 to 48, inclusive [J. A. 566-9], which stated that the Committee could act only through a quorum or through a subcommittee established, authorized or approved by a quorum of the full Committee. Objections by petitioner that such testimony, which was presented to the Court alone, should be adduced before the jury and that, in any event, it amounted to a mere conclusion as to the legal validity of the subcommittee, were overruled [J. A. 240-44].

Certain additional proof on the issue of blacklisting was available at this petitioner's trial which was not available in the same form in Lawson's trial. This came about as follows:

During this trial Congressman J. Parnell Thomas was ill; his deposition was taken and then read to the Court [see J. A. 319-49]. In that deposition, Congressman Thomas testified that the following among other matters, had oc-

curred at the Committee hearing concerning petitioner Trumbo shortly before he testified:

"Mr. Wood: We have tried to figure out why they do it—why they take the abuse and give the money away they do. We can't figure it out, except that maybe they think if anything happens they are going to be commissars here—they are going to be the executives of the studios.

"Some of them, I think, want to be intellectuals. I think they have different reasons; but we cannot quite figure out how they can dominate these people, Americans, and make them do the things they do. There are some of them back there now" [J. A. 334].

Chairman Thomas of the Committee, then said:

"We will take care of them when their turn comes" [J. A. 334].

In the deposition given by Chairman Thomas, he testified:

"Q. Who were you referring to by 'them' in your statement, when Mr. Wood said, 'There are some of them back there now? A. * * * I would say, without looking back, that I am probably referring to the witnesses who had been called and who were in the room when Mr. Samuel Grosvenor Wood was testifying.

Q. That included Mr. Dalton Trumbo, did it not? A. It did.

Q. Did you ever call upon the Hollywood motion picture producers to clean out their house? A. Yes; many times, just as I would call upon any other industry that had communists in it, to clean their house.

Q. *By that you mean, sir, to have them discharged from their jobs?* A. *Exactly.*" (Emphasis supplied.) [J. A. 335-6.]

The trial court refused to admit this or any other portion of the deposition of Chairman Thomas to show that the governmental power of the Committee was used to effectuate the discharge of petitioner; nor did the Court admit it on the question of pertinency tried by the Court [J. A. 349], nor on the issues submitted to the jury [J. A. 475-78].

Robert E. Stripling, the clerk and chief investigator of the Committee, testified that counsel at the motion picture hearings had on numerous occasions requested the right to cross-examine witnesses, all of which requests were denied [J. A. 449-457].[8] Cross-examination to establish that the witness Stripling, while acting on behalf of the Committee, had called for the discharge of individuals employed in the motion picture industry was ruled out by the trial court [J. A. 457-9].

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[8] "Q. (By Mr. Houston): Did you give Mr. Trumbo or his counsel the right to cross-examine Mr. Macaulay after that statement was made? A. (By Mr. Vail): No, sir.

Q. Did you give Mr. Trumbo or his counsel an opportunity to examine Mr. Wood after Mr. Wood's statement was made, that you have just given us? A. No, sir.

Q. Did Mr. Trumbo or his counsel ever ask for an opportunity to cross-examine Mr. Macaulay or Mr. Wood on the testimony? A. I would have to check.

Q. All right. Will you please, then, check at page 289?

The Court: Isn't this repetition?

Mr. Houston: Yes, it is repetition except as to this witness. He has just brought that out. I think it is very important.

The Court: All right. Call his attention to the place.

By Mr. Houston: Q. Page 289, where Mr. Crum says: 'I ask you to bring back and permit us to cross-examine the witnesses Adolph Menjou, Fred Niblo, John Charles Moffitt, Richard Macaulay, Rupert Hughes, Sam Wood, Ayn Rand,' et cetera. You heard that request made? A. Yes, sir.

Q. Was that granted or denied? A. It was denied." [J. A. 494].

For the limited purpose of showing petitioner's state of mind while a witness before the Committee, evidence was allowed by the Court showing that the Committee had denied to petitioner the right of cross-examination and had refused to comply with his request that he be confronted with the evidence against him [J. A. 395-409; 461]; for the same limited purpose the Court allowed petitioner to adduce evidence showing that the Committee had utilized its power as an official agency of government to effectuate the discharge of the petitioner and his blacklisting in the motion picture industry. However, this evidence was not allowed as proof of the fact which it so clearly showed—namely, that the Committee was acting in excess of the lawful bounds of its power; instead the Court instructed the jury that it was not to concern itself as to whether the Committee "conducted its hearings in a fair or unfair manner; nor whether or not certain members of this Committee or its chief investigator sought to blacklist or cause the discharge of this defendant by his employers" [J. A. 543-4].

The Court further quashed *subpoenas duces tecum* designed, among other things, to secure Committee records pertaining to the same subject [J. A. 508-18].

In addition, over petitioner's objections, the Court instructed the jury that it was defendant's duty to answer the questions and, in effect, that the only issue was whether he had given a responsive reply [J. A. 544-9]. The Court instructed the jury that petitioner had the right while a witness to state and make known to the sub-

committee any objection he might have to answering questions; however, the Court went on to instruct the jury as follows:

> "* * * but (he) did not have the right to do more than to state and make known his objections. He did not have the right to insist upon any elaboration of his objections or repeatedly to state his objections instead of answering the questions" [J. A. 547].

The Court rejected petitioner's instructions, which were predicated upon the proposition that any procedure which inflicts punishment not based upon a previous law and without the safeguards of a procedural trial is one out Constitution and laws will neither sanction nor tolerate. [Defendant's request for instructions 15, 16, 17, 17a, 17b, 21, 22, 23, 24, 25, 25a, 25b, 26a, 79, 80, 81, 82, B, C, and D; J. A. 560, 562-4, 574-7.]

On the questions of pertinency, and over the petitioner's objections on the ground of hearsay, the government read to the trial court, sitting without a jury, certain testimony given before the Committee during its hearings on October 20 and 23, 1947, consisting solely of the bare conclusions of two witnesses that Dalton Trumbo was a Communist and of one witness that the Screen Writers' Guild was Communist controlled [J. A. 245-252]. This being the only government evidence on the point, the petitioner moved for an acquittal on the grounds that pertinency had not been established, which motion the Court denied [J. A. 260-1].

At trial petitioner's cross-examination and evidence on pertinency established some additional facts, the substance of which follows: The members of the Committee were certain that they possessed the evidence concerning petitioner's political and trade union affiliations before the questions were propounded to him on October 28, 1947, and they would not have believed him if he had denied such affiliation [J. A. 262-5, 254-6, 325, 338, 456; Committee Hearings p. 342]. At the committee hearings prior to petitioner's appearance, all members of the Committee present had publicly called for the discharge of all persons in the industry, including the defendant, alleged to be members of the Communist Party [J. A. 269-286]. It appeared that the discharge of such persons was the primary purpose of the motion picture hearing [J. A. 283]; and it further appeared that the Screen Writers' Guild was a lawful trade union; that the Guild had been recognized by the National Labor Relations Board as a labor organization certified to represent screen writers; that a rival organization known as the Motion Picture Alliance had carried on a constant struggle against the Screen Writers' Guild; that one of the principal purposes of the motion picture hearings conducted by the Committee was to aid the rival organization in destroying the Screen Writers' Guild; that the witnesses whose testimony the Committee relied on to establish the pertinency of the questions herein were members of that rival organization; that long before the hearings and continuously thereafter the Screen Writers' Guild had

asserted that its membership lists should be held inviolate and secret because of the possibility of discharge of its members, and that compulsory disclosure under oath was in violation of the law and well established public policy [J. A. 297-304].

Through a government official in the field of labor relations for ten years [J. A. 304], petitioner offered and the Court refused to permit proof that the inviolability of trade union membership was a matter of established governmental policy at the time when the inquiries were propounded to petitioner by the Committee [J. A. 304-314].

The trial court held as a matter of law that the two questions covered by the indictment were pertinent to the inquiry [J. A. 351].

The summaries of the offers of proof set forth in the *Lawson* petition are equally applicable here and they are therefore incorporated by reference. The offers of proof relating to blacklisting are set forth at pages 9 to 10; those relating to censorship at pages 11 to 12; those relating to the Committee's use of its hearings and powers to conduct an unlimited investigation into the content of speech and ideas, designed to impede and resulting in the impediment of free speech and association at pages 12 to 14; those relating to denial of due process of law at pages 14 to 15; those relating to the existence of any "subversive" or "un-American" propaganda in motion pictures and the possibility of writers' injecting any such "propaganda" into motion pictures are set forth at pages 16 to 17 [see also J. A. 291-6].

In addition the Court denied petitioner's offer to prove through Louis B. Mayer, executive head of the Metro-Goldwyn-Mayer Studios that he had been visited by two special investigators of the Committee in the summer of 1947; that he had asked them to point out any subversiveness in motion pictures and they were unable to do so; that they had brought up the name of the petitioner Trumbo and told the witness to "wake up" and "clean house of persons suspected of communistic tendencies." The offer included testimony that in his forty-one years in the motion picture industry this witness had never seen, according to any reasonable definition of the term "subversive," a subversive line, script, play or scene in any motion picture [J. A. 442-9].

The petitioner then offered and the Court refused to admit all the scripts written by him to show that they contained no subversive material, by any reasonable definition, of any kind [J. A. 315-318, 497-500].

Prior to and at the outset of the trial petitioner moved to transfer the cause to another district for trial on the ground that juries in the District of Columbia contain many government employees and their relatives and that with such a jury, it was impossible to have a fair trial in this particular cause wherein the principal prosecution agency was the House Committee on Un-American Activities, which Committee exercised meaningful control and authority over the jobs and the political views of the government employees and their near relatives. The motions to transfer to another district for trial were denied [J. A. 17-28; J. A. 6].

Prior to the final selection of the jury, petitioner moved to excuse for cause from the trial jury selected all those jurors who were government employees and this motion was denied [J. A. 218]; as finally constituted, the trial jury in the case was composed of eight persons employed by the government [J. A. 200-233]; the petitioner's request for additional peremptory challenges so that he might attempt to get non-government employees into the jury box was likewise denied [J. A. 232].

Immediately prior to the trial a challenge to the array and a motion to dismiss the jury panel was made on the ground that it was selected in a manner neither designed nor calculated to obtain a representative cross-section of the community; in support thereof, petitioner proved that one of the qualifications for jury service in the District of Columbia is an affirmative response to the question "Have you any views opposed to the American form of government?" [J. A. 177], and that one prospective juror had been classified as "off-color" because he stated in answer to this question that he was opposed to "taxation without representation" in the District of Columbia [J. A. 177]; in addition, petitioner proved the jury commissioner examined handwriting on questionnaires returned by talesmen to determine their "intelligence" [J. A. 182-3], and that persons of low income groups with "poor handwriting" were disqualified because such poor handwriting disclosed a lack of "intelligence" in members of such groups, the while those in higher income brackets who likewise had "poor handwriting" were accepted for jury service [J. A. 197]; this motion also was denied [J. A. 199].

Statement as to Jurisdiction.

The judgment of the Court of Appeals was entered on June 13, 1949.

The jurisdiction of this Court is based on the Act of June 25, 1948 Chapter 646 (62 Stats. 869) U. S. C., Title 28, Section 1254, Subsection 1, which provides that a writ of certiorari may issue to the Court of Appeals of the District of Columbia "after rendition of judgment or decree."

Statutes Involved

The statutes involved are the same as those set forth in the companion petition for John Howard Lawson and are incorporated herein by reference.

Questions Presented.

The questions presented are in all substantial respects identical with the questions presented in the companion Lawson petition.

A somewhat different situation occurring at the trial, however, requires the restatement of Question No. VIII as follows:

Did the Court commit prejudicial error affecting the substantial rights of the petitioner by instructing the jury that the petitioner while on the witness stand before the Congressional investigators was, (1) required to give a responsive reply to questions, and (2) required to state his objections without however elaborating upon them or repeating them?

In addition, this petition presents one further question as follows: Can the Committee as an agency of government use its official power to compel a witness to answer the following question: "Are you a member of the Screen Writers' Guild?"

Reasons for Granting Writ.

The reasons set forth for the granting of the writ in the *Lawson* case are equally applicable here and are therefore incorporated by reference.

In addition, however, this case presents to the Court, for the first time, the issue whether the Committee may utilize its official power as an agency of government to compel a witness before it to disclose his trade union affiliations. History thus repeats itself—but this time only a few years after it has first occurred in Nazi Germany and shocked the world. Always the first question is: Are you a Communist? Official power to ask that question always presumes equal power to ask the next question: Are you a trade unionist?, and then the next: Are you a Jew?, and the next: Are you a practicing Catholic?, and the next: Are you a devout Methodist?

This sequence inexorably follows if the power is once conceded, for thought control is either all inclusive, or it is non-existent. Once a single individual is required to account to government officials for any one of his beliefs or affiliations, then all of his beliefs and affiliations are equally subject to complete accounting before the inquisitor.

The true issue here is not only whether the Committee may call upon the judiciary to imprison the petitioner on the charge that he refused to disclose his trade union membership; it is in addition whether this agency of government, upon the delusive pretext that it was investigating the "dangerous" idea labeled "Communism," may call before it every trade unionist in America and compulsorily require an answer to the same interrogatory.

This, we submit, a question of moment; it is one not heretofore answered by this Court.

I.

The Committee's Utilization of Congressional Power, as an Agency of Government, to Compel Disclosure of Private Political Opinion and Association (Including Union Membership) Is Forbidden: (A) By the First, Fourth and Fifth Amendments as Unwarranted Invasions Into the Private Rights of Individuals, and (B) By the Ninth and Tenth Amendments as Unwarranted Invasion Into the Area of Governmental Powers Reserved Exclusively to the Sovereign People.

Everything that was said under this heading in the *Lawson* case is applicable here. In this case, however, the petitioner was asked to disclose his trade union affiliation, as well as his political associations.

Labor organizations are formed and exist for the advancement of the ideas and programs of laboring men and women (*N. L. R. B. v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *Thornhill v. Alabama*, 310 U. S. 88). The compulsory disclosure of membership in labor organizations is, therefore, for reasons set forth in the Lawson petition, also an interference with the freedom of speech and association and other constitutional rights guaranteed by the First, Fourth, Fifth, Ninth and Tenth Amendments, and Article I of the Constitution.

The particular purposes of the trade union have become so vital to the welfare of the whole nation, that the right to belong to it and to participate in its activities has received very precise judicial and statutory sanction. (*Gompers v. Bucks Stove and Range Co.*, 221 U. S. 418. Also *Alaska S. S. Co. v. International Longshoremen's Assn.*, 236 Fed. 964, 969, 970 (D. C., W. D., Wash).)

This right of the free association of labor became so indispensable to our highly industrialized economy that it was incorporated into a whole series of labor laws enacted by Congress. In 1932, this concept was formalized in the Norris-LaGuardia Act. Section 102 of that Act declaring the national labor policy, stated:

> "It is necessary that he (labor) have full freedom of association, self-organization, etc."

The National Labor Relations Act "by protecting the exercise by workers of full freedom of association" (Title 29, Sec. 151, U. S. C. A.) carried forward this policy.

Despite other material changes, the Labor-Management Relations Act of 1947 leaves intact as a matter of policy encouragement for the freedom of association and self-organization of workers (Chapter 120, Public Law 101).

These labor acts did not create for labor the right of free association. On the contrary, they were enacted in order that the fundamental character of the right might be safeguarded.

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33, 34;

Hague v. Committee for Industrial Organization, 307 U. S. 496;

National Labor Relations Board v. American Pearl Button Co., 149 F. 2d 311.

The protection of the constitutional rights of individuals from compulsory disclosure of their trade union membership was found to be so necessary that it was formalized as part of our national policy. For the past 13 years acts of Congress have consistently barred the compulsory revealing of any trade union membership. The National Labor Relations Act, as amended, provides that the col-

lective bargaining agent of the employees may be determined by "secret ballot." (29 U. S. C. A., 159 c (1).) This national policy was followed by a host of similar acts of state legislatures, such as Pennsylvania, New York, Wisconsin, Massachusetts. The "yellow-dog" contract, and "black-list" which had been, for many years, important employer methods of compulsory disclosure of union affiliation, effective in destroying trade unions, were finally outlawed as part of a national labor policy (*Grower-Shipper Vegetable Association,* 15 N. L. R. B. 39). Even during the critical war period, the national labor policy of protecting rights of individuals from disclosure of their union membership was not abrogated. In fact, the War Labor Disputes Act (1943) incorporated and followed the policies of the Norris-LaGuardia Act and the National Labor Relations Act (*U. S. v. United Mine Workers of America,* 330 U. S. 258).

The Labor-Management Relations Act, of 1947, Chapter 20, Public Law 101, did not change this policy against compulsory disclosure of trade union affiliation (Sec. 39, U. S. C. A. 158) of the National Labor Relations Act. (*Texarkana Bus Co. v. N. L. R. B.,* 119 F. 2d 480; *N. L. R. B. v. Harris-Woodson Co.,* 162 F. 2d 97.)

The House Committee on Un-American Activities, by attempting to compel these defendants to reveal their trade union membership, has completely negated this national labor policy, and seeks to enforce criminal sanctions against the defendants for their refusal to declare their trade union affiliations. If the policy of the Committee to require such disclosure is upheld, our sound national labor policy would be completely frustrated and negated. It would be a warning to the millions of trade union members that their affiliation could become a matter of

public record at the will of this Committee, and that the protection given to them by the First Amendment of the Constitution and the national labor policy adopted by Congress, which merely safeguarded the constitutional right, was a mere formality. It would be a case of the government violating both the Constitution and its own declared policy.

The causal relationship between the disclosure demanded by the Committee and the resulting burden on speech here urged is closely analogous to interference with workmen's self-organization effected by employer interrogation as to union affiliation and sympathy. Employers hostile to union organization do not collect information concerning their employees' union sympathies for simple statistical purposes. They obtain these facts for the very reason that the exposure entailed will deter both the employees who make the disclosures and their fellows from supporting the union and its program. Neither this Court nor the courts of appeal have had any difficulty in perceiving that this exposure, especially in the context of employer opposition to the union, constitutes a substantial interference with, and restraint and coercion of, the exercise of the workmen's right of self-organization (*H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514; *Norfolk Southern Bus Corp. v. N. L. R. B.* (4th Cir.), 159 F. 2d 516; cer. den. 330 U. S. 844).

In the case at bar no less immediate a causal relationship obtains between exposure of union affiliations and interference with the exercise of the rights guaranteed in the First Amendemnt. The question concerned was asked as part of the Committee's plan to expose as "un-American," "subversive" and "Communistic" certain individuals and organizations, including the Screen Writers Guild, in

the motion picture industry. The disclosures were commanded in a context of official condemnation of organizations and individuals so labeled, emanating not only from the Committee but also from the President, the Attorney General, the Secretary of State and many others (see *Barsky v. U. S.*, 167 F. 2d 241, 247, notes 18, 19 and 20). If the exposure of union affiliation to a hostile employer interferes with the exercise of the right of self-organization by the disclosing workman and by his fellows, *a fortiori* its exposure, as well as the exposure of political affiliation to a hostile government interferes with the exercise of the First Amendment rights by both the individual interrogated and the community generally.

The character of the limitation on the freedom presented in the case at bar, even in a much less burdensome form, is one which this Court has unequivocally condemned. In the case of *Thomas v. Collins*, 323 U. S. 516, it was held that a statute providing for compulsory disclosure by a labor organizer of the name of the cause he supports or the organization with which he is affiliated is a limitation invalid *per se*, even though no area of discretion is reserved to the administering officer to approve or disapprove the speech of the individual or organization concerned and the registration be a purely ministerial act undertaken for informational purposes only. While such a restraint may be thought nominal in burden, it is invalid "as a matter of principle" by reason of the fact that it becomes operative only because of and only upon the exercise of the First Amendment freedoms. No less a limitation upon the power of government should be here imposed.

To hold that Congress can do with its investigatory powers, which are merely implied, what it cannot do with

its legislative powers would be to hold that the implied power is greater than the expressed power from which it stems. This conclusion the courts have rejected (*Kilbourn v. Thompson,* 103 U. S. 168; *Boyd v. U. S.,* 116 U. S. 616, 630).

II.

This Particular Inquiry Into the Hollywood Motion Picture Industry Lay Entirely Outside the Lawful Bounds of the Power of the House Committee Because It Constituted a Censorship of the Content of Motion Pictures and Thereby Violated the First Amendment.

Petitioner adopts the argument made on this point in the *Lawson* case.

III.

The Committee Used Its Powers Under Section 121 of Legislative Reorganization Act of 1946 to Impose a Blacklist Against the Petitioner and Other Named Individuals, and Thereby Placed Itself Above the Constitution and Disregarded the Elementary Requirements of Due Process of Law in That: (1) It Usurped the Power to Legislate Confided by the Constitution to the Concurrent Action of Both Houses of Congress and the President; (2) It Exercised Such Power in a Manner Prohibited Even to the Entire Legislature; (3) It Invaded the Area Delegated Exclusively to the Judiciary; and (4) It Exercised Such Judicial Power in a Manner Prohibited Even to the Judiciary.

Petitioner adopts the argument made on this point in the *Lawson* case.

IV.

The Statute Creating the House Committee on Un-American Activities on Its Face and Particularly as Construed and Applied Is Unconstitutional in That (1) It Permits Investigation of, and as Construed and Applied Has Been Used to Investigate, the Content of Speech and Ideas, an Area in Which No Legislation Is Possible Thereby Exceeding the Boundaries of Legislative Power Under Article I of the Constitution, (2) It Permits the Very Process of Investigation to Be Used, and as Generally Construed and Applied It Has Been Used, to Expose and Stigmatize the Content of Any and All Speech and Ideas Disapproved by the Members of the Committee, Thereby Impeding and Placing a Burden Upon Free Thought, Speech and Association in Violation of the First, Ninth and Tenth Amendments, and (3) The Statute Is so Vague and Ambiguous That, as Applied in a Criminal Case, It Violates the First Amendment and the Due Process Clause of the Fifth Amendment.

Petitioner adopts the argument made on this point in the *Lawson* case.

V.

The Trial Court Committed Prejudicial Errors and Denied Petitioner a Fair Trial Under the Sixth Amendment by Its Rulings, Instructions and Comments.

A. The Subcommittee Before Which Petitioner Appeared Was Not Shown to Be a Lawfully Constituted Tribunal, and the Trial Court Committed Prejudicial Error by Reason of Its Rulings and Instructions Which Prevented the Jury From Considering This Fact in Reaching Its Verdict.

Here, as in *Christoffel v. U. S.* (No. 528, decided June 27, 1949), the question of the existence of a lawfully

constituted tribunal was taken away from the jury (see argument in *Lawson's* petition pp. 88-94).

There are, in addition, three matters in this case which require consideration.

Here, the chairman in his oral announcement, claimed by the government to have been the appointment of a subcommittee, did not designate the members of the subcommittee which he allegedly appointed. The words used by the chairman were:

> "The record will show that a subcommittee is sitting and those present are Mr. McDowell, Mr. Vail and Mr. Thomas."

There is nothing in this language to indicate whether or not this is the full membership of the subcommittee or what number of members were to constitute the subcommittee. Since the numerical size of the subcommittee has to be left to guesswork, it is just as reasonable to guess that it was a seven-member body as a three-member body. It is obvious that if the subcommittee was one of seven members, a quorum was not present, only three members being in attendance. The existence of essential facts cannot be left to assumptions in a criminal case.

Furthermore, in this case, the Government, apparently recognizing the weakness of its showing in the *Lawson* case, adopted a new tactic in proceeding against Trumbo by the introduction of evidence purportedly showing an attempted ratification by the full Committee of the chairman's action in appointing the subcommittee.

This undoubtedly was an attempt to follow the procedure adopted in *Myers v. U. S.*, No. 9797. However, in that case, the Committee's ratification of the chair-

man's act in appointing the subcommittee, took place before General Myers testified before that subcommittee [J. A. 371-3]. Here, the ratification, if any, took place after the defendant Trumbo had testified. If the Committee was not validly constituted at the time defendant Trumbo testified before it, no crime could be charged. Defendant Trumbo's alleged offense took place on October 28, 1947. Action taken by the full Committee on November 17, 1947, twenty days later, obviously could not breathe life into a tribunal that did not have previous legal existence. A parallel situation would be one where a witness swore falsely before a person purporting to be a notary but whose commission had not yet become effective (*Fanchion v. State,* 104 Tex. Cr. 78, 282 S. W. 597).

Ratification by a full Committee is obviously proper as to legislative acts and forms a useful procedural shortcut, but procedural shortcuts are not available to make criminal acts which were innocent when committed. Such rules of legislative convenience cannot be permitted to affect the rights and liberties of non-members of legislative bodies (*U. S. v. Smith,* 286 U. S. 6, 33). If the defendant Trumbo was not testifying before a valid subcommittee on the day he appeared, his act cannot be made criminal later by the ratification process. To do so would be violative of Article I, Section 9, Clause 3 of the Constitution of the United States, as an *ex post facto* procedure.

The third additional matter to be considered is the testimony of the Parliamentarian of the House of Representatives. It is not necessary to determine the inadmissibility of that testimony, or any error involved in presenting it to the Court alone, rather than to the jury. For this testimony merely confirms the contention of pe-

titioner that, at the very least, the act of a chairman in appointing a subcommittee requires ratification, tacit or otherwise, in order to establish its validity. Here as noted above, the only evidence of ratification related to a time after petitioner testified before the Committee, and it was, therefore, immaterial here.

B. The Instructions of the Court That the Defendant, While a Witness Before the Congressional Investigators, Was Required to Give a Responsive Reply and Had the Right Only to State His Objections Without Elaborating or Repeating Them, Were Erroneous, Confusing and Misleading and Prejudicially Affected the Substantial Rights of the Defendant.

The Court gave the following charge to the jury:

> "An answer means a responsive reply; it does not mean any kind of a reply that a person desires to give. So a witness may refuse to answer by making an unresponsive reply or statement when he does so not accidentally but intentionally, knowingly, with full understanding of the question, and after being given a reasonable opportunity to answer responsively. His motives, as distinguished from his intent, in making the statement may not be considered." [J. A. 546-547].

Thereafter the Court went on to charge:

> "I might state that the defendant had the right—I instruct you that the defendant had the right—to state and make known to the subcommittee any objections he might have to answer questions, but did not have the right to do more than to state and make known his objections. He did not have the right to insist upon any elaboration of his objections or re-

peatedly to state his objections instead of answering the questions" [J. A. 547].[4]

These charges may be clear to lawyers. But to a jury of laymen they are patently confusing. Nowhere is there a definition of what constitutes a responsive reply. The subject of responsiveness or non-responsiveness is not free from doubt, even to the bench and bar (see Wigmore—Third Edition, paragraph 785). But although the non-responsiveness of a purported reply was made the touchstone of guilt, no standard for determining such a reply characteristic was given to the jury.

To add to this error, and as part of its charge relative to the issue of responsiveness, the Court charged the jury:

> "His motives, as distinguished from his intent, in making the statement may not be considered."

But here again no judicial guidance was given to the jury by which it could distinguish the motives which could not be considered, from the intent which the jury was required to consider, and ultimately adjudge. The line separating motive from intent is too evanescent to be recognized readily without considerable judicial light. Unless very carefully delineated, motive and intent are absolutely indistinguishable to the laity. But nothing was here done to avoid this confusion concerning the sole and central issue of fact which the jury was called upon to resolve. This was reversible error. (See *Agnew v. U. S.*, 165 U. S. 36.)

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[4]Defendant's requested instructions, numbered 59 through 69, inclusive [J. A. 571-2] correctly embraced the law on these subjects, but each such instruction was refused by the Court.

Following such confusing charges, the Court then directed the jury that the defendant could only state his objections to the Congressional investigators, but could neither elaborate nor repeat them. The evidence, however, did show that Mr. Trumbo repeated his objections and elaborated them. Thus the Court, for all meaningful purposes, directed the jury to find the defendant guilty. This charge took from the jury the basic factual question—was there proof beyond a reasonable doubt, and under all the circumstances shown, of a deliberate and intentional refusal to answer—by directing the jury that Mr. Trumbo was committing the offense when he repeated his objections and elaborated upon them.

Neither statute nor case law condemns the repetition or elaboration of an objection. It is possible that such repetition and elaboration of objection may under some circumstances be evidence of a deliberate and intentional refusal. They are not, however, conclusive evidence of it. This is particularly true in the case at bar.[5]

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[5]For here it appears that Mr. Trumbo had sought to present a written statement outlining his position to the Congressional investigators; that this opportunity was denied to him; that he was threatened by the Chairman, J. Parnell Thomas, at the very onset of the inquiry as follows:

> "As a witness, if you conduct yourself like the first witness yesterday, you won't be given the privilege of being a witness before a Committee of Congress, before this Committee of Congress." [J. A. 382-384].

The record then shows the following: That the investigator for the Committee, Mr. Stripling, at first directed the witness to answer questions "Yes" or "No," followed by an explanation, but that the Chairman overruled his investigator by stating to Mr. Trumbo:

> "The Chair agrees with your point that you need not answer the questions 'Yes' or 'No';

that then the witness, after thanking the Chairman for so ruling, sought to present evidence as to the nature of his work on motion

In the confused setting here of questions reframed and withdrawn, of rulings made and reversed, of directions by the Chairman followed by cross-directions by the Chief Investigator to the witness, it is not surprising that Mr. Trumbo repeated his objections and elaborated upon them. But such repetition and elaboration here became, under the Court's direction, the touchstone of guilt. This was prejudicial error.

It must always be remembered that the only issue of fact left to the jury was that of determining whether there had been, under all the circumstances shown, a deliberate

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picture scripts, which has been condemned by Committee witnesses who preceded Mr. Trumbo (and who he was unable to cross-examine); that the Chairman himself then asked Mr. Trumbo to state how long one of these motion picture scripts was; when advised that these scripts averaged 115-170 pages in length, the Chairman announced:

"They are too long—too many pages";

thereafter, following many interruptions in connection with the question "Are you a member of the Screen Writers' Guild?", Congressman McDowell observed to the witness:

"It is no disgrace, you know, to identify yourself as a member of a labor union in the United States. Most of us belong to something."

To which Mr. Trumbo replied:

"Mr. Chairman, I would not consider it a disgrace to be a member of a labor union."

Shortly thereafter the Chairman (pounding his gavel) declared:

"Excuse the witness—."

But this time the investigator overruled the Chairman with.

Mr. Stripling: "Just a moment, Mr. Chairman—"

Whereupon Mr. Trumbo asked:

"Am I excused?"

Then the Chairman reversed himself and said that Mr. Trumbo was not excused. Thereupon, patently confused by these conflicting orders, Mr. Trumbo asked the Chairman whether the quality of his last answer was acceptable, to which the Chairman replied:

"That hasn't got anything to do with your answer to the last question." [J. A. 382-390].

and intentional refusal to answer. At the very least the question here was not free from doubt. It should have been left to the jury fairly, unfettered by the charge that the witness was committing some offense by repetition and elaboration (see *Bihn v. U. S.*, 328 U. S. 633).

C. Utilization of Government Employees as Jurors in This Particular Case Involving the House Committee on Un-American Activities as the Principal Prosecuting Witness, Denied to Petitioner a Fair Trial Under the Sixth Amendment.

Petitioner adopts the argument on this point in the *Lawson* petition.

D. The Trial Court Erred in Denying Petitioner's Challenge and Motion to Dismiss the Jury Panel in That (1) the Use of Questionnaire Containing the Question Whether the Prospective Juror Holds Any "Views Opposed to the American Form of Government" Was Improper and Invalidated the Jury Panel, Particularly in the Present Case, and (2) the Defendant's Right to an Impartial Jury Drawn From a Cross-Section of the Community Was Abrogated by the Establishment of Qualifications for Jury Service Other Than Those Required by Statute and Which Limited the Representative Character of the Jury.

Here, as in the *Lawson* case, the petitioner filed, and introduced evidence in support of, a challenge and motion to dismiss the jury panel, which was denied [J. A. 71-99]. The question of fact and of law are similar to those set forth in the *Lawson* case. However, evidence was presented in this case to supplement the facts established in the *Lawson* case.

In this case, it was admitted that the Jury Commission itself had reached the conclusion that the question whether

the prospective jurors held any "views opposed to the American form of government" is not "sufficiently clear" and is "too broad." However, the Commission has continued to use the question because it felt it to be "essential" and the Commission had not "been able to arrive at a better question" [J. A. 93-4].

The Jury Commission considered the manner in which questionnaires were filled out and the quality of the handwriting on the questionnaires to determine the "intelligence" and "understanding" of the prospective jurors [J. A. 100, 171-8]. It was conceded that the evidence of intelligence deduced from handwriting is "superficial," but, the Jury Commissioner said, "We work on the best evidence we have" [J. A. 110-11].[6] This admittedly superficial and speculative test to determine "intelligence" is buttressed by a fundamental and clear-cut consideration—

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[6]Illustrative of the nature of the tests made is the following testimony of the jury commissioner?

"Q. I direct your attention now to 233 (number of jury questionnaire), and ask you what the reason for your judgent in disqualification on that was? A. The question in this case was whether the individual was sufficiently intelligent.

Q. What is there that you doubt her intelligence? A. The general appearance of the form.

Q. Can't you be a little more specific than 'The general appearance of the form'? What is there about the general appearance of the form? A. In my judgment there was a question as to whether that was prepared by a person who was entirely literate.

Q. What is there about it that made you question the literacy? Just what can you tell us? A. If you look at the form, the general appearance, the form of printing and so forth gave a question as to whether the person was literate.

Q. You mean you didn't think this person could read or write? A. It wasn't a question of that. It was a question of general literacy, including intelligence and so on.

Q. Did you think this person was able to understand the English language? A. I couldn't tell.

the job classification of the prospective juror. Thus, "one of the many factors which the Jury Commission would consider as tending in the direction of disqualifying him (the prospective juror) as a juror * * * is * * * a past history of being a maid, or a janitor, or a laborer, or some such occupation which does not require a high standard of education" [J. A. 183].

Another matter weighed in determining "intelligence" is the foreign birthplace of some of the prospective jurors [J. A. 123]. The resulting disqualification of persons in lower economic classifications and those of foreign birth is inevitable [J. A. 109-128; 169-177] while at the same time native-born Americans in the higher economic categories pass muster, despite poor handwriting [J. A. 178-80; Defs. Exs. 5 to 58; J. A. 184].

The evidence establishes that the tests and qualifications devised by the Jury Commission are vague and

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Q. You couldn't tell from this whether the person was able to understand the English language? A. There have been many cases like that where we found they didn't.

Q. You mean you couldn't tell that a person who fills out, answers each one of the questions responsively to the question that is asked, 'Place of birth: Washington, D. C.; Date of Birth: November 22, 1899; Are you able to read and write and understand the English language: Yes; What is your occupation: Maid; Give name of business and business address: Lansburgh's Department Store, 7th and E N.W.; How long have you been engaged in your present business: 23 years' that person doesn't understand the English language? A. In my judgment there was a question after looking at it, and I wanted the conclusion with my colleagues.

Q. Will you please point out one specific thing on that questionnaire, one specific thing which raised a question? A. Under the law my duty is to look at these and come to a conclusion as to judgment, and that was my judgment.

Q. Point to one specific thing upon which that judgment was based. A. The general appearance of the filling out of the form. It was crude. It was not the filling out of a person of, I would say, intelligence and education" [J. A. 109-11].

ambiguous; they result in the Jury Commission determining for itself what kind of jurors will bring in correct verdicts; they discriminate against persons in the lower economic groups and those of foreign birth; they are inconsistent with the desired aim of selecting a jury which constitutes a representative cross-section of the community.

Respectfully submitted,

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